

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission)
On Its Own Motion)
)
v.)
)
Sperian Energy Corp.)
Citation for Alleged Violations of)
Sections 16-115A(b) and 16-115A(e))
of the Public Utilities Act and)
83 Ill.Adm.Code 412.110, 412.130,)
412.170)

Docket No. 15-0438

**MORE DEFINITE STATEMENT
OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION**

NOW COMES the Staff of the Illinois Commerce Commission (“Staff”), by and through their undersigned counsel, pursuant to Section 200.170 of the Illinois Commerce Commission’s Rules of Practice (83 Ill. Adm. Code 200.170); a January 20, 2016 Official Commission Notice of Case or Proceeding in this docket, granting Sperian Energy Corporation’s (“Sperian”) Verified Petition for Interlocutory Review (“Petition”); and the schedule set by the Administrative Law Judge and respectfully submits a More Definite Statement (“Statement”) in the above-captioned matter.

I. INTRODUCTION

1. Sperian Energy Corp. (“Sperian”) is an Alternative Retail Electric Supplier (“ARES”) as defined in Section 16-102 of the Public Utilities Act (“Act”), 220 ILCS 5/16-102. Sperian

was certified as an ARES within the State of Illinois by the Illinois Commerce Commission ("Commission") on January 10, 2012, in Docket No. 11-0743.

2. In a Staff Report dated July 20, 2015 ("Staff Report"), Staff of the Consumer Services Division and of the Office of Retail Market Development recommended that the Commission initiate a proceeding directing Sperian to respond to the allegations in the Staff Report and to show cause why the Commission should not revoke Sperian's certificate and its designation as an ARES or grant such other relief as authorized by law.

3. On July 28, 2015, the Illinois Commerce Commission ("Commission") entered an initiating order ("Order") finding the Staff Report provides an evidentiary basis for the initiation of a proceeding directing Sperian to show cause why the Commission should not take any of the remedial or punitive actions contemplated by the Act for violations or non-conformance with the provisions of Section 16-115 or 16-115A of the Act. 220 ILCS 5/16-115. The Order made Sperian a respondent in the proceeding and the Staff Report was made a part of the record.

4. Sperian entered its appearance in this matter on August 17, 2015 and, on August 19, 2015, a prehearing conference was held. A petition to intervene was filed by the Citizens Utility Board ("CUB") and granted by the Administrative Law Judge ("ALJ"). The People of the State of Illinois, by and through Lisa Madigan, Attorney General of the State of Illinois ("AG") intervened as a matter of right.

5. Pursuant to a schedule set by the ALJ, Sperian filed a verified response to the Order on September 30, 2015 ("Response"). Brian Rose, President of Sperian, swore under oath that the statements contained in that document were true and correct to the best of his knowledge, information and belief.

6. On October 21, 2015, Sperian filed a motion for a “complaint or more definite statement” from Staff (“Motion”).
7. After the Parties fully briefed the Motion, the ALJ issued a ruling on December 10, 2015 denying the motion.
8. On December 30, 2015, Sperian filed a petition for interlocutory review. The ALJ stayed the proceeding pending resolution of the petition.
9. On January 20, 2016, the Commission granted Sperian’s Petition.
10. On January 21, 2016, the ALJ ordered Staff to file a “complaint or more definite statement” by February 4, 2016. Staff’s More Definite Statement follows.

II. LEGAL AUTHORITY

A. Public Utilities Act

11. Sperian is certified in Illinois as an ARES, pursuant to 220 ILCS 5/16-115 of the Act. To obtain certification, all ARES are required, among other things, to “comply with all applicable federal, State, regional and industry rules, policies, practices and procedures for the use, operation, and maintenance of the safety, integrity and reliability, of the interconnected electric transmission system.” 220 ILCS 5/16-115(d)(2).

Once certified, all ARES must:

- (1) “continue to comply with the requirements for certification stated in subsection (d) of Section 16-115”;
- (2) “obtain verifiable authorization from a customer, in a form or manner approved by the Commission consistent with Section 2EE of the Consumer Fraud and Deceptive Business Practices Act (“Section 2EE”), before the customer is switched from another supplier”;
- (3) “adequately disclose[] the prices, terms and conditions of the products or services that the alternative retail electric supplier is offering or selling to the customer” in any marketing materials which make statements concerning prices, terms, and conditions of service; and

- (4) “give the customer written information that adequately discloses, in plain language, the prices, terms and conditions of the products and services being offered and sold to the customer” before any customer is switched from another supplier.

220 ILCS 5/16-115; 220 ILCS 5/16-115A(a)(ii), (b), (e)(i), (e)(ii); see 815 ILCS 505/2EE

12. Additionally, as an ARES Sperian is required to comply with 83 Ill. Admin. Code Part 412, entitled “Obligations of Retail Electric Suppliers.” 83 Ill. Admin. Code 412 (“Part 412”); 220 ILCS 5/16-115A(a)(2); 220 ILCS 5/16-115(d)(2). Part 412 sets forth the obligations of retail electric suppliers with respect to sales, marketing, solicitation and advertising.

13. Part 412 implements Section 16-118 of the Public Utilities Act (220 ILCS 5/16-118) and is authorized by Sections 10-101 and 8-501 of the Public Utilities Act. 220 ILCS 5/10-101 and 8-501.

14. Part 412 prescribes, among other things: (1) minimum contract terms and conditions; (2) telemarketing; and (3) training of retail electric supplier agents to comply with Illinois regulations and statutes on energy sales. *See, generally*, 83 Ill. Admin. Code 412.110, 412.130, 412.170.

15. Part 412.130(c) requires a Retail Electric Supplier (“RES”) agent to ensure that, during sales presentations to prospective customers, information described in subsections (d) through (p) of Section 412.110 are verbally disclosed to the customer. 83 Admin. Code 412.130(c).

16. All ARES are required to “continue to comply with the requirements for certification stated in subsection (d) of Section 16-115.” 220 ILCS 5/16-115A(a)(ii). Section 16-115(d) requires “[t]hat the [ARES] will comply with all applicable federal, State, regional and industry rules, policies, practices and procedures for the use, operation, and maintenance

of the safety, integrity and reliability, of the interconnected electric transmission system.”

220 ILCS 5/16-115(d)(2).

17. A violation of the requirements of Part 412 is a violation of Section 16-115.

18. The Commission has jurisdiction to entertain and dispose of any complaint against an ARES alleging, among other things, that “the alternative retail electric supplier has violated or is in nonconformance with any applicable provisions of Section 16-115 through Section 16-115A.” 220 ILCS 5/16-115B(a).

19. Violations of Part 412 are violations of 220 ILCS 16-115A and, pursuant to 220 ILCS 5/16-115B, the Commission has authority to take whatever corrective action it deems appropriate for violations of 220 ILCS 16-115A.

20. Additionally, Section 5-202 of the Act addresses violations that are not otherwise covered by the Act. Pursuant to this section, “...any corporation other than a public utility...that violates or fails to comply with any provisions of this Act...in a case in which a penalty is not otherwise provided for in this Act, shall be subject to a civil penalty...corporations other than a public utility are subject to a civil penalty of up to \$30,000 for each and every offense.” 220 ILCS 5/5-202.

21. Finally, Section 5-202.1 states “any person or corporation...who knowingly misrepresents facts or knowingly aids another in doing so or knowingly permits another to misrepresent facts through testimony or the offering or withholding of material information in any proceeding shall be subject to a civil penalty. Whenever the Commission is of the opinion that a person or corporation is misrepresenting or has misrepresented facts, the Commission may initiate a proceeding to determine whether a misrepresentation has in fact occurred. If the Commission finds that a person or

corporation has violated this Section, the Commission shall impose a penalty of not less than \$1,000 and not greater than \$500,000. Each misrepresentation of a fact found by the Commission shall constitute a separate and distinct violation.” 220 ILCS 5/5-202.1.

B. Consumer Fraud and Deceptive Business Practices Act

22. The Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/, prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.

23. Section 2EE of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2EE, governs electric service provider selection.

24. Violations of the Consumer Fraud and Deceptive Business Practices Act are violations of 220 ILCS 16-115A. 220 ILCS 5/16-115A(b). Pursuant to 220 ILCS 5/16-115B, the Commission has authority to take whatever corrective action it deems appropriate for violations of Section 16-115A.

25. The Commission has separate and additional authority to take actions for violations of the Consumer Fraud and Deceptive Business Practices Act according to the terms of that statute. 815 ILCS 505/2EE(d).

C. Telephone Solicitation Act

26. The Telephone Solicitation Act, 815 ILCS 413/1, *et seq.*, prohibits the sale of goods or services in the State of Illinois via telephone except in accordance with the terms of that act.

27. Violations of the Telephone Solicitation Act are violations of 220 ILCS 16-115A and, pursuant to 220 ILCS 5/16-115B, the Commission has authority to take whatever corrective action it deems appropriate for violations of 220 ILCS 16-115A.

III. STATEMENT OF FACTS

28. The Consumer Services Division ("CSD") and the Office of Retail Market Development ("ORMD") of the Commission work in tandem to monitor consumer complaints against ARES or Retail Energy Suppliers ("RES"). When those two offices identify issues or concerns with a specific ARES, Staff contacts that company in an effort to address the problems.

29. One of the ways that Staff monitors performance by an ARES is by tracking the number of consumer complaints and by ranking companies accordingly on a Complaint Scorecard. Complaint scorecards are calculated monthly and provide a method for Staff to evaluate an individual ARES's level of informal complaints in relation to the level of informal complaints for the entire residential ARES market. The ranking is based on a six-month average of supplier complaint rates compared to the industry average to calculate a complaint ratio. Suppliers are placed into five groups displayed as a scale of stars, with one star indicating the highest rate of informal complaints, up to five stars, which represents the lowest rate of informal complaints.

30. Staff learned of potential problems with Sperian in August 2012, the first month Sperian appeared on the Commission's Complaint Scorecard. A supplier is included on the Complaint Scorecard once it has had at least 200 residential customers for at least three consecutive months. Sperian was listed a one-star supplier and remained at a one-star ranking until July 2013 when it moved up to a two-star ranking.

31. Sperian's low ranking on the Complaint Scorecard caused Staff to perform a more in-depth review of Sperian's performance. Staff's subsequent review of Sperian's sales

scripts and third party verifications process identified non-compliances with Illinois' requirements.¹

32. By a letter dated December 24, 2012 Staff advised Sperian to cease all noncompliant sales activity, including problems Staff discovered with Sperian's verifications.

33. Pursuant to Staff's letter, Staff and Sperian engaged in discussions aimed at bringing Sperian into compliance. Staff memorialized these discussions in a January 16, 2013 letter.

34. By letter dated February 14, 2013, Sperian responded to Staff and described its efforts to make corrections to rectify the incidents of non-conformance.

35. On April 18, 2013, after reviewing Sperian's description of the Company's attempts at corrective action, Staff provided additional recommendations to Sperian intended to facilitate Sperian's efforts to address non-compliance.

36. Staff determined that Sperian was responsive to Staff's concerns, as evidenced by the fact that complaints against Sperian dropped significantly. Because the Company had taken corrective measures, and consumer complaints had decreased, Staff took no further action at this time.

37. In December 2014 CSD Staff noted that the number of consumer complaints against Sperian rose to levels similar to those reported against the Company in 2012. Sperian's complaint volumes remained elevated throughout the first half of 2015, lowering

¹ For purposes of this Statement, "violation" and "non-conformance" are used interchangeably to indicate performance or actions that does not comply with some or all of the legal requirements set forth in Section II, Legal Authority. Violations of specific sections are set forth more fully in the Sections that follow.

the Company to a one star rating – the lowest possible – on the Commission's Complaint Scorecard.

38. On March 31, 2015 at 4:09 pm, via email, Staff requested Sperian's marketing materials. Specifically, Staff asked Sperian to provide "copies of all residential sales scripts and TPV scripts used by Sperian in Illinois within the last 6 months."

39. Sperian provided Staff with nine different sales scripts ("Documents") used at varying times by Sperian telemarketing agents from August 2014 to April 2015. Sperian also provided a March 24, 2014 document that appeared to detail Sperian's requirements for sales scripts

40. Staff reviewed the Documents and made the determination that sufficient evidence existed to conclude that Sperian's sales tactics adopted in multiple scripts and used in late 2014 and the first quarter of 2015 were deceptive in nature. Staff's full review of the nine scripts provided indicated a repeated pattern of violations in Sperian's sales scripts, as well as violations with its TPV script, welcome letters, and the terms and conditions provided to consumers.²

41. Based upon Sperian's poor informal complaint rating and Staff's subsequent investigation, Staff drafted the Staff Report. Staff recommended such corrective action as the Commission might determine appropriate for violations, in part because the increase in complaints against Sperian and Sperian's concomitant low ranking occurred so shortly after Staff's efforts to assist Sperian in taking corrective action to rectify the previous high level of consumer complaints.

² As used herein, the term "consumer" refers both to customers for whom Sperian is the retail electric provider and to individuals who are solicited by Sperian to select Sperian as their retail electric provider.

III. SPECIFIC VIOLATIONS

A. Allegation No. 1 – 8/15/2014 Script - Failure to Obtain Consent for Solicitation in Violation of 83 Admin. Code 412.130(a)

42. Staff incorporates Paragraphs 1-41 by reference as if they were set forth fully herein.

43. One of the Documents Sperian provided to Staff included the header ***BEGIN CONF*****"*****"END CONF*** ("8/15/2014 Script").

44. The 8/15/2014 Script was provided to Staff on April 8, 2015.

45. On information and belief, Sperian provided the 8/15/2014 Script to its agents to be used essentially verbatim when such sales agents contacted consumers in or about August 2014.

46. On information and belief, Sperian and/or its agents employed and followed the 8/15/2014 Script when contacting consumers in or about August 2014.

47. The Telephone Solicitation Act requires a live operator soliciting the sale of good or services to "inquire at the beginning of the call whether the person called consents to the solicitation." 815 ILCS 413/15(b)(2).

48. The 8/15/2014 Script contains no language that requires the agent to ascertain whether the consumer consents to the solicitation, in violation of the Telephone Solicitation Act.

49. Part 412.130(a) sets forth the obligations of a RES agent who contacts consumers by telephone and specifies that these obligations are "in addition to complying with the Telephone Solicitation Act [815 ILCS 413]." 83 Admin. Code 412.130(a).

50. Violation of the Telephone Solicitation Act is a violation of Part 412.

51. By its conduct as described herein, Sperian violated the Telephone Solicitation Act each and every time it contacted consumers using the 8/15/2014 Script to solicit them to select Sperian as their retail electric provider and failed to obtain the consumer's consent to the solicitation.

52. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV, Penalties, following.

B. Allegation No. 2. – 8/15/2014 Script - Failure to Identify Call as a Solicitation in Violation of 83 Admin. Code 412.130(a)

53. Staff incorporates Paragraphs 42-46 by reference as if they were set forth fully herein.

54. The 8/14/2014 Script creates a net impression that the call is not a sales call, and that the caller is not an agent of an independent seller of power and energy service.

55. The 8/15/2014 Script creates this net impression with initial statements that emphasat the contact is ***BEGIN CONF*****,"END CONF*** that the ***BEGIN CONF***** END CONF*** but which never indicate the call is a soliciton. In truth and in fact, there is no such thing as the ***BEGIN CONF*****."END CONF***

56. On information and belief, Sperian did not send mailings to prospective consumers and the reference to ***BEGIN CONF*****"*****"END CONF*** is deliberately and intentionally misleading.

57. The 8/15/2014 Script does not contain language that informs the consumer that the call is a sales call, in violation of the Telephone Solicitation Act.

58. Sperian acknowledged that the sales script utilized by the Company does not contain the word "solicitation." (Response, 8.)

59. Not only does the 8/15/2014 Script fail to inform consumers that it is a solicitation, it contains language that creates a net impression that the call is not a sales call, and that the caller is not an agent of an independent seller of power and energy service.

60. Sperian failed to inform the consumer that the call was a solicitation. In addition, the 8/15/2014 Script deliberately and intentionally misleads consumers to believe that Sperian or some other entity had sent to them information regarding the so-called ***BEGIN CONF*****,"END CONF*** which does not exist in any case.

61. The Telephone Solicitation Act requires a live operator soliciting the sale of good or services to "immediately state his or her name, the name of the business or organization being represented, and the purpose of the call." 815 ILCS 413/15(b)(1).

62. Part 412.130(a) sets forth the obligations of a RES agent who contacts consumers by telephone and specifies that these obligations are "in addition to complying with the Telephone Solicitation Act [815 ILCS 413]." 83 Admin. Code 412.130(a).

63. Violation of the Telephone Solicitation Act is a violation of Rule 412.

64. By its conduct as described herein, Sperian violated the Telephone Solicitation Act each and every time it contacted consumers using the 8/15/2014 Script to solicit them to select Sperian as their retail electric provider and failed to affirmatively state the call was a sales call.

65. Each and every violation of the Telephone Solicitation Act is a violation of Section 16-115A of the Act, punishable as provided by Section 16-115B of the Act.

66. Staff requests that the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV, Penalties, following.

C. Allegation No. 3 – 8/14/2014 Script - Guarantee of Savings in Violation of 83 Admin. Code 412.110(o)

67. Staff incorporates Paragraphs 42-46 by reference as if they were set forth fully herein.

68. Statements in the script state or imply that savings are guaranteed if the consumer selects Sperian as its RES. Among other statements, the 8/14/2014 Script directs the Sperian agent to obtain certain information ***BEGIN CONF*****
*****”END CONF*** and ***BEGIN CONF*****
*****”END CONF***

69. The script repeatedly uses words or descriptors such as ***BEGIN CONF*****
*****”END CONF*** to characterize the rate, and states or implies that savings are guaranteed if Consumers choose Sperian as their RES.

70. Pursuant to Rule 412, if savings are guaranteed under certain circumstances, the RES agent must describe in plain language the conditions that must be present for savings to occur. 83 Admin. Code 412.110(o)³.

³ Staff notes 83 Admin. Code 412.110(o) refers to Section 412.130(e) and no such section exists. The lettering in Section 412.130 skips from (d) to (f); it is Staff's belief that this was an inadvertent error and references to Section 412.130(e) are in fact references to Section 412.130(e).

71. RES agents, following the 8/15/2014 Script, did not describe in plain language what conditions must be present for savings to occur if the consumer selected Sperian as his or her RES.

72. By its conduct as described herein, Sperian violated Part 412.110(o) each and every time it utilized the 8/15/2014 Script and stated or implied to consumers that savings were guaranteed but did not provide the circumstances under which those savings could be realized.

73. Each and every violation of Part 412.110(o) is a violation of Section 16-115A of the Act, punishable as provided by Section 16-115B of the Act.

74. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV, Penalties, following.

D. Allegation No. 4 – 8/15/2014 Script – Use of Deceptive or Misleading Language in Violation of 83 Ill Admin Cod 412.170(c)

75. Staff incorporates Paragraphs 42-46 by reference as if they were set forth fully herein.

76. The 8/14/2014 Script uses potentially false or misleading words such as ***BEGIN CONF*****,"END CONF*** to mischaracterize the rate, and implies a guaranteed savings if consumers choose Sperian as their RES.

77. Among other statements, the 8/14/2014 Script contains the phrases ***BEGIN CONF*****,"END CONF*** and ***BEGIN CONF*****
*****."END CONF***

78. The statements in the 8/15/2014 Scripts that were used by RES agents to solicit consumers were deceptive and misleading, in that Sperian stated or implied that savings

would definitely be realized, and further stated that ***BEGIN CONF*****

*****"END CONF*** a customer might expect would be lower rates, when in truth and in fact he or she would be switched to Sperian.

79. By its conduct as described herein, Sperian violated Part 412.170(c) each and every time it utilized the 8/15/2014 Script and described the switch to Sperian in deceptive or misleading terms which failed to clearly inform the consumer that his or her services were being switched from the utility to Sperian.

80. Each and every violation of Part 412.170(c) is a violation of Section 16-115A of the Act, punishable as provided by Section 16-115B of the Act.

81. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV, Penalties, following.

E. Allegation No. 5 – 8/15/2014 Script - Failure to Drop Off Call in Violation of 815 ILCS 505/

82. Staff incorporates Paragraphs 42-46 by reference as if they were set forth fully herein.

83. Pursuant to the Consumer Fraud and Deceptive Business Practices Act, "[a] supplier or supplier's sales representative initiating a 3-way conference call or a call through an automated verification system must drop off the call once the 3-way connection has been established." 815 ILCS 505/2EE(b).

84. The 8/15/2014 Script states ***BEGIN CONF*****

*****"END

CONF***

85. On information and belief, Sperian agents connected consumers with an automated third party verification ("TPV") system.

86. Sperian agents, as set forth in the 8/15/2014 Script, were instructed to stay on the line after the three-way connection with the automated system was established, in violation of Section 2EE(b) of the Consumer Fraud Act.

87. It would have been impossible for Sperian agents to utilize the script and ***BEGIN
CONF*****"END CONF***

without violating Section 2EE(b) of the Consumer Fraud Act.

88. Staff is informed and believes that, in the course of telephone solicitations employing this script, Sperian agents stayed on the line after consumers were connected with the automated TPV system.

89. By its conduct as described herein, Sperian violated Section 2EE(b) of the Consumer Fraud and Deceptive Business Practices Act each and every time an agent stayed on the line during a verification.

90. Each and every violation of the Consumer Fraud and Deceptive Business Practices Act is a violation of Section 16-115A of the Act, punishable as provided by Section 16-115B of the Act.

91. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended actions for this alleged violation is addressed more fully in Section IV, Penalties, following.

F. Allegation No. 6 – 8/21/2014 Script - Knowingly Providing False Information to Staff in Violation of 220 ILCS 5/5-201.1

92. Staff incorporates Paragraphs 42-46 by reference as if they were set forth fully herein.

93. The 8/15/2014 Script was provided to Staff as an electronic word document.

94. While reviewing the 8/15/2014 Script, Staff used Word's "track changes" feature and selected "all markup." Viewed in this manner, the All markup setting revealed, in redline format, changes that had been made to the 8/15/2014 Script.

95. The "track changes" feature allows a user to determine the date upon which each change to the document was made.

96. Staff determined the 8/15/2014 Script was modified on March 31, 2015 beginning at approximately 4:38 pm, approximately thirty minutes after Staff requested that Sperian provide the scripts.

97. On information and belief, the changes were made to soften directly deceptive language so that violations of applicable laws were less evident or less severe.

98. The changes made to the 8/15/2014 Script are as follows:***BEGIN CONF

a. *****

b. *****

c. *****

***** " END CONF***

99. On information and belief, the changes to the 8/15/2014 Script were intentionally made by Sperian before the document was submitted to Staff.

100. On information and belief, Sperian did not intend for Staff to see the revisions.

101. The 8/15/2014 Script constituted an intentionally false and misleading submission to the Commission because the document was changed after it was used, so the document as provided to Staff did not truthfully and accurately reflect the 8/15/2014 Script as utilized by Sperian agents to solicit consumers.

102. The 8/15/2014 Script as provided by Sperian constituted knowingly false and misleading information in violation of Section 5/5-201.1. By its conduct as described herein, Sperian knowingly violated Section 5-202.1.

103. A violation of Section 5-201.1 is a violation of Section 16-115A of the Act, punishable as provided by Section 16-115B of the Act.

104. A violation of Section 5-201.1 is also punishable by the terms of that section.

105. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV. Penalties, following.

G. Allegation No. 7 – 10/21/2014 Script – Failure to Gain Consent for Solicitation in Violation of 83 Admin. Code 412.130(a)

106. Staff incorporates Paragraphs 1-41 by reference as if they were set forth fully herein.

107. One of the Documents Sperian provided to Staff included the header ***BEGIN CONF*****"END CONF*** ("10/21/2014 Script").

108. The 10/21/2014 Script was provided to Staff on April 8, 2015.

109. On information and belief, the 10/21/2014 Script was provided by Sperian to its agents to be used essentially verbatim when sales agents contacted consumers in or about October 2014.

110. On information and belief, Sperian and/or its agents employed and followed the 10/21/2014 Script when contacting consumers in or about October 2014.

111. The Telephone Solicitation Act requires a live operator soliciting the sale of good or services to “inquire at the beginning of the call whether the person called consents to the solicitation.” 815 ILCS 413/15(b)(2).

112. The 10/21/2014 Script contains no language that requires the agent to ascertain whether the consumer consents to the solicitation in violation of the Telephone Solicitation Act.

113. Part 412.130(a) sets forth the obligations of a RES agent who contacts consumers by telephone and specifies that these obligations are “in addition to complying with the Telephone Solicitation Act [815 ILCS 413].” 83 Admin. Code 412.130(a).

114. Violation of the Telephone Solicitation Act is a violation of Part 412.

115. By its conduct as described herein, Sperian violated the Telephone Solicitation Act each and every time it contacted consumers using the 10/21/2014 Script to solicit them to select Sperian as their retail electric provider and failed to obtain the consumer’s consent to the solicitation.

116. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for violation of this allegation is addressed more fully in Section IV. Penalties, following.

H. Allegation No. 8 – 10/21/14 Script - Failure to Identify Call as a Solicitation in Violation of 83 Admin. Code 412.130(a)

117. Staff incorporates Paragraphs 106-110 by reference as if they were set forth fully herein.

118. The 10/21/2014 Script does not contain language that informs the consumer that the call is a sales call, in violation of the Telephone Solicitation Act.

119. Sperian acknowledged that the sales script utilized by the Company does not contain the word "solicitation." (Response, 8.)

120. The 10/21/2014 Script creates a net impression that the call is not a sales call, and the caller is not an agent of an independent seller of power and energy service. The script states that the agent is calling ***BEGIN CONF "*****"END CONF*** and ***BEGIN CONF "*****"

. "END CONF

121. The script further provides for the sales agent to make such statements as ***BEGIN CONF "*****". "END CONF*** The 10/21/2014 Script further script further provides for the sales agent to make such statements to the effect that the aforementioned savings will be "applied," without making any reference to enrolling with or switching to a new supplier.

122. If a consumer refuses the agent's initial solicitation, the script provides for the sales agent to ask: ***BEGIN CONF "*****"END CONF*** In truth and in fact, however, the consumer is not "staying" with his or her current supplier when he or she switches from bundled utility supply to an ARES.

123. The Telephone Solicitation Act requires a live operator soliciting the sale of goods or services to “immediately state his or her name, the name of the business or organization being represented, and the purpose of the call.” 815 ILCS 413/15(b)(1).

124. Part 412.130(a) sets forth the obligations of a RES agents who contacts consumers by telephone and specifies that these obligations are “in addition to complying with the Telephone Solicitation Act [815 ILCS 413].” 83 Admin. Code 412.130(a).

125. Violation of the Telephone Solicitation Act is a violation of Part 412.

126. By its conduct as described herein, Sperian violated the Telephone Solicitation Act each and every time its agents contacted consumers using the 10/21/2014 Script to solicit them to select Sperian as their retail electric provider, by failing in each case to affirmatively state the call was a sales call.

127. Each and every violation of the Telephone Solicitation Act is a violation of Section 16-115A of the Act, punishable as provided by Section 16-115B of the Act.

128. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV, Penalties, following.

I. Allegation No. 9 – 10/21/2014 Script - Guarantee of Savings in Violation of 83 Admin. Code 412.110(o)

129. Staff incorporates Paragraphs 106-110 by reference as if they were set forth fully herein.

130. The 10/21/2014 script repeatedly characterizes the rate with potentially false or misleading words, such as ***BEGIN CONF“*****”,END CONF*** without any discussion for comparison purposes about the utility supply rate, rates with municipal aggregation or through other ARES.

131. Pursuant to Part 412, if savings are guaranteed under certain circumstances, the RES agent must describe in plain language the conditions that must be present for savings to occur. 83 Admin. Code 412.110(o).

132. Sperian agents, following Script 10/21/2014, did not describe in plain language the conditions which had to be present for savings to occur if the consumer selected Sperian as his or her RES.

133. By its conduct as described herein, Sperian violated Part 412.110(o) each and every time its agents utilized Script 8/15/2014 and implied to consumers that savings were guaranteed but did not provide the circumstances under which those savings could be realized.

134. Each and every violation of Part 412.110(o) is a violation of Section 16-115A of the Act, punishable as provided by Section 16-115B of the Act.

135. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for violation of this allegation are addressed more fully in Section IV, Penalties, following.

J. Allegation No. 10 – 10/21/2014 Script - Use of Deceptive or Misleading Language in Violation of 83 Ill Admin Code 412.170(c)

136. Staff incorporates Paragraphs 106-110 by reference as if they were set forth fully herein.

137. The 10/21/2014 Script creates a net impression that the call is not a sales call and the caller is not an agent of an independent seller of power and energy service by stating that the agent is calling ***BEGIN CONF*****END

CONF*** and ***BEGIN CONF*****

."END CONF

138. The script further provides for the sales agent to make such statements as

BEGIN CONF"**."END CONF*** The

10/21/2014 Script further script further provides for the sales agent to make such statements to the effect that the aforementioned savings will be ***BEGIN CONF"*****,"END CONF*** without making any reference to enrolling with or switching to a new supplier.

139. If a consumer refuses the agent's initial solicitation, the script provides for the sales agent to ask: ***BEGIN CONF"*****

*****"END CONF*** In truth and in fact, however, the consumer is not "staying" with his current supplier when he or she switches from bundled utility supply to an ARES.

140. The statements in the 10/21/2014 Scripts that were used by RES agents to solicit consumers were deceptive and misleading.

141. By its conduct as described herein, Sperian violated Part 412.170(c) each and every time it utilized the 10/21/2014 Script and described the switch to Sperian in deceptive or misleading terms which failed to clearly inform the consumer that his or her services were being switched from the utility to Sperian.

142. Each and every violation Part 412.170(c) is a violation of Section 16-115A of the Act, punishable as provided by Section 16-115B of the Act.

143. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV, Penalties, following.

K. Allegation No. 11 – October 2014 Script - Failure to Obtain Consent for Solicitation in Violation of 83 Admin. Code 412.130(a)

144. Staff incorporates Paragraphs 1-41 by reference as if they were set forth fully herein.

145. One of the Documents Sperian provided to Staff included the header ***BEGIN

CONF*****

*****"END CONF*** (October 2014 Script).

146. The October 2014 Script was provided to Staff on April 8, 2015.

147. On information and belief, the October 2014 Script was provided by Sperian to its agents to be used essentially verbatim when sales agents contacted consumers in or about October 2014.

148. On information and belief, Sperian and/or its agents followed the October 2014 Script when contacting consumers in or about October 2014.

149. The Telephone Solicitation Act requires a live operator soliciting the sale of goods or services to "inquire at the beginning of the call whether the person called consents to the solicitation." 815 ILCS 413/15(b)(2).

150. The October 2014 Script contains no language that requires the agent to ascertain whether the consumer consents to the solicitation in violation of the Telephone Solicitation Act.

151. Part 412.130(a) sets forth the obligations of a RES agent who contacts consumers by telephone and specifies that these obligations are "in addition to complying with the Telephone Solicitation Act [815 ILCS 413]." 83 Admin. Code 412.130(a).

152. Violation of the Telephone Solicitation Act is a violation of Part 412.

153. By its conduct as described herein, Sperian violated the Telephone Solicitation Act each and every time it contacted consumers using the October 2014 Script to solicit them to select Sperian as their retail electric provider and failed to obtain the consumer's consent to the solicitation.

154. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV, Penalties, following.

L. Allegation No. 12 – October 2014 Script - Failure to Identify Call as a Solicitation in Violation of 83 Admin. Code 412.130(a)

155. Staff incorporates Paragraphs 144-148 by reference as if they were set forth fully herein.

156. In violation of the Telephone Solicitation Act, the October 2014 Script does not contain language that informs the consumer that the call is a sales call.

157. Sperian acknowledged that the sales script utilized by the Company does not contain the word "solicitation." (Response, 8.)

158. The October 2014 script creates the net impression that the call is not a sale and the caller is not an agent of an independent seller of power and energy service by saying,

BEGIN CONF **
 *****. "END CONF***

159. On information and belief, Sperian did not send mailings to consumers prior to the call, and the agent's statements falsely imply that Sperian was somehow responsible for a mailing which was actually sent by a utility or municipal aggregator or another ARES.

160. On information and belief, Sperian's statements using the October 2014 script regarding mailings were intended to mislead consumers into thinking the call was not a solicitation.

161. Sperian's script further states the agent will make a ***BEGIN CONF*****"END CONF*** to the consumer's utility account, instead of enrolling and switching the consumer, requesting that the consumer ***BEGIN CONF*****

*****"END CONF***

162. The Telephone Solicitation Act requires a live operator soliciting the sale of goods or services to "immediately state his or her name, the name of the business or organization being represented, and the purpose of the call." 815 ILCS 413/15(b)(1).

163. Part 412.130(a) sets forth the obligations of a RES agent who contacts consumers by telephone and specifies that these obligations are "in addition to complying with the Telephone Solicitation Act [815 ILCS 413]." 83 Admin. Code 412.130(a).

164. Violation of the Telephone Solicitation Act is a violation of Part 412.

165. By its conduct as described herein, Sperian violated the Telephone Solicitation Act each and every time it contacted consumers using the October 2014 Script to solicit them to select Sperian as their retail electric provider and failed to affirmatively state the call was a sales call.

166. Each and every violation of the Telephone Solicitation Act is a violation of Section 16-115A of the Act, punishable as provided by Section 16-115B of the Act.

167. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV, Penalties, following.

M. Allegation No. 13 – October 2014 Script - Guarantee of Savings in Violation of 83 Admin. Code 412.110(o)

168. Staff incorporates Paragraphs 144-148 by reference as if they were set forth fully herein.

169. The October 2014 Script was intended to induce consumers to believe that switching to Sperian would guarantee a lower electric bill.

170. The script repeatedly characterizes the Sperian rate with words and descriptors such as ***BEGIN CONF*****,"END CONF*** and also repeatedly states that the utility default rate by comparison as ***BEGIN CONF*****."END CONF***

The script further states that the utility default rate was ***BEGIN CONF*****,"END CONF*** when in truth and in fact the utility default rate per kWh for the month of October 2014 was approximately \$.07 per kWh.⁴

171. Pursuant to Part 412, if savings are guaranteed under certain circumstances, the RES agent must describe in plain language the conditions that must be present for savings to occur. 83 Admin. Code 412.110(o).

⁴ The historic price to compare information on Plug-In shows 7.487 cents per kWh for October 2014, and the PEA at that time was negative 0.5, which effectively lowers the utility supply rate to approximately \$.07 per kWh.

172. RES agents, following the October 2014 Script, did not describe in plain language what conditions must be present for savings to occur if the consumer selected Sperian as their RES.

173. By its conduct as described herein, Sperian violated Part 412.110(o) each and every time it utilized the October 2014 Script and implied to consumers that savings were guaranteed but did not provide the circumstances under which those savings could be realized.

174. Each and every violation of Part 412.110(o) is a violation of Section 16-115A of the Act, punishable as provided by Section 16-115B of the Act.

175. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV, Penalties, following.

N. Allegation No. 14 – October 2014 Script - Use of Deceptive or Misleading Language in Violation of 83 Ill Admin Cod 412.170(c)

176. Staff incorporates Paragraphs 144-148 by reference as if they were set forth fully herein.

177. The October 2014 script created the net impression that the call is not a sale and the caller is not an agent of an independent seller of power and energy service by saying,

BEGIN CONF**
*****. "END CONF***

178. On information and belief, Sperian did not send mailings to consumers prior to the call and the agent's statements falsely imply that Sperian is somehow responsible for a mailing from a utility or municipal aggregator or another ARES.

179. Sperian's statements using the October 2014 script regarding mailings were intended to mislead consumers into thinking the call was not a solicitation.

180. Sperian's October 2014 Script is further intended to mislead consumers by instructing agents to state the agent will make a ***BEGIN CONF*****END CONF*** to the consumer's utility account, instead of enrolling and switching the consumer, and by further requesting that the customer ***BEGIN CONF*****

*****END CONF***

181. The statements in the October 2014 Scripts that were used by RES agents to solicit consumers were deceptive and misleading.

182. By its conduct as described herein, Sperian violated Part 412.170(c) each and every time it utilized the October 2014 Script describing the switch to Sperian in deceptive or misleading terms which failed to clearly inform the consumer that his or her electric service were being switched from the utility to Sperian.

183. Each and every violation Part 412.170(c) is a violation of Section 16-115A of the Act, punishable as provided by Section 16-115B of the Act.

184. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV, Penalties, following.

O. Allegation No. 15 – October 2014 Script - Failure to Drop Off Call in Violation of 815 ILCS 505/

185. Staff incorporates Paragraphs 144-148 by reference as if they were set forth fully herein.

186. Pursuant to the Consumer Fraud and Deceptive Business Practices Act, “[a] supplier or supplier's sales representative initiating a 3-way conference call or a call through an automated verification system must drop off the call once the 3-way connection has been established.” 815 ILCS 505/2EE(b).

187. The October 2014 Script indicates to the consumer that the sales agent is ***BEGIN CONF*****”END CONF*** during the TPV, and then contains a ***BEGIN CONF*****”END CONF*** section.

188. The RES agent is directed by Sperian to utilize the October 2014 Script and stay on the line during the TPV in direct violation of Section 2EE. See 815 ILCS 505/2EE(b).

189. On information and belief, Sperian agents connected consumers with an automated TPV system.

190. Sperian agents, as set forth in the October 2014 Script, were instructed to stay on the line after the three-way connection with the automated system was established.

191. It was impossible for Sperian agents to utilize the October 2014 Script and “return to the phone and answer anything [the consumer] may have” without violating 815 ILCS 505/2EE(b).

192. By its conduct as described herein, Sperian violated the Consumer Fraud and Deceptive Business Practices Act each and every time an agent stayed on the line.

193. Each and every violation of the Consumer Fraud and Deceptive Business Practices Act is a violation of Section 16-115A of the Act, punishable as provided by Section 16-115B of the Act.

194. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV, Penalties, following.

P. Allegation No. 16 – October 2014 Script - Knowingly Providing False Information to Staff in Violation of 220 ILCS 5/5-201.1

195. Staff incorporates Paragraphs 144-148 by reference as if they were set forth fully herein.

196. The October 2014 Script was provided to Staff in as an electronic word document.

197. While reviewing the October 2014 Script, Staff employed Word's "track changes" feature and selected "all markup." All markup revealed, in redline format, changes that had been made to the October 2014 Script.

198. The "track changes" feature allows a user to ascertain the date upon which each change was made to the document.

199. Staff determined the October 2014 was modified on April 1, 2015, beginning just one day after Staff requested that Sperian provide the scripts.

200. The changes made to the October 2014 Script and which were only revealed when Staff looked at the document in track changes mode are as follows:***BEGIN CONF

- a. *****

- b. *****

- c. *****

d. *****

 e. *****

 f. *****

 *****END CONF***

201. The document as provided to Staff did not accurately reflect the October 2014 Script at the time it was utilized by Sperian agents to solicit customers.

202. The October 2014 Script as provided by Sperian was knowingly false and misleading information in violation of Section 5-201.1. By its conduct as described herein, Sperian knowingly violated Section 5-202.1.

203. A violation of 5-201.1 is a violation of Section 16-115A of the Act, punishable as provided by Section 16-115B of the Act.

204. A violation of Section 5-201.1 is also punishable by the terms of that section.

205. Staff request the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended actions for this alleged violation are addressed more fully in Section IV, Penalties, following.

Q. Allegation No. 17 – 11/17/2014 Script - Failure to Obtain Consent for Solicitation in Violation of 83 Admin. Code 412.130(a)

206. Staff incorporates Paragraphs 1-41 by reference as if they were set forth fully herein.

207. One of the Documents Sperian provided to Staff included the header ***BEGIN CONF*****END CONF*** and was dated November 17, 2014 (“11/17/2014 Script”).

208. The 11/17/2014 Script was provided to Staff on April 8, 2015.

209. On information and belief, Sperian provided the 11/17/2014 Script to its agents to be used essentially verbatim when sales agents contacted consumers in or about November 2014.

210. On information and belief, Sperian and/or its agents followed the 11/17/2014 Script when contacting consumers in or about November 2014.⁵

211. The Telephone Solicitation Act requires a live operator soliciting the sale of goods or services to “inquire at the beginning of the call whether the person called consents to the solicitation.” 815 ILCS 413/15(b)(2).

212. The 11/17/2014 Script contains no language that requires the agent to ascertain whether the consumer consents to the solicitation in violation of the Telephone Solicitation Act.

213. Section 412.130(a) sets forth the obligations of a RES agent who contacts consumers by telephone and specifies that these obligations are “in addition to complying with the Telephone Solicitation Act [815 ILCS 413].” 83 Admin. Code 412.130(a).

214. Violation of the Telephone Solicitation Act is a violation of Part 412.

215. By its conduct as described herein, Sperian violated the Telephone Solicitation Act each and every time it contacted consumers using the 11/17/2014 Script to solicit them

⁵ Staff notes that the 11/17/2014 Script was provided to Staff in response to a requests for all scripts that were utilized during a specific time period before this proceeding was initiated. Sperian subsequently responded to a data request from Staff in this proceeding and indicated that this script had not actually been utilized. Sperian has provided no additional information to substantiate their claim that this script was not used, despite their previous characterization of it as one that was used during the time in question. Accordingly, Staff makes allegations concerning this script subject to verification that the script was in fact used to solicit consumers.

to select Sperian as their retail electric provider and failed to obtain the consumer's consent to the solicitation.

216. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV, Penalties, following.

R. Allegation No. 18 – 11/17/2014 Script - Failure to Identify Call as a Solicitation in Violation of 83 Admin. Code 412.130(a)

217. Staff incorporates Paragraphs 206-210 by reference as if they were set forth fully herein.

218. The 11/17/2014 Script does not contain language that informs the consumer that the call is a sales call.

219. Sperian acknowledged that the sales script utilized by the Company does not contain the word "solicitation." (Response, 8.)

220. The language of the 11/17/2014 Script did not state the call was a sales call and did not state the RES agent was not an agent of an independent seller of power and energy service. Instead the 11/17/2014 Script referred to Sperian simply as ***BEGIN CONF*****

*****."END CONF***

221. While the 11/17/2014 Script contained the phrase ***BEGIN CONF*****"END CONF*** the wording of the 11/17/2014 Script in its totality is misleading and deceptive, and calculated to create the impression that the RES agent is affiliated with the utility.

222. Immediately after disavowing any affiliation with the utility program, the 11/17/2014 asks the consumer, ***BEGIN CONF*****

*****"END CONF***

223. The 11/17/2014 Script then moves directly into the sales offering but does not indicate that they are soliciting the consumer to switch energy service providers. In fact, the 11/17/2014 Script instructs the Sperian agent to state that ***BEGIN CONF*****

*****"END CONF***

224. Consumers who complied with the Sperian agents' request to provide their account numbers were not enrolled in an Energy Choice Program, since no such program existed, either then or now. Rather, by following the 11/17/2014 Script, Sperian switched the consumer's retail energy service provider from the utility to Sperian.

225. The Telephone Solicitation Act requires a live operator soliciting the sale of good or services to "immediately state his or her name, the name of the business or organization being represented, and the purpose of the call." 815 ILCS 413/15(b)(1).

226. Part 412.130(a) sets forth the obligations of a RES agents who contacts consumers by telephone and specifies that these obligations are "in addition to complying with the Telephone Solicitation Act [815 ILCS 413]." 83 Admin. Code 412.130(a).

227. Violation of the Telephone Solicitation Act is a violation of Part 412.

228. By its conduct as described herein, Sperian violated the Telephone Solicitation Act each and every time it contacted consumers using the 11/17/2014 Script to solicit them

to select Sperian as their retail electric provider without clearly articulating that intention and every time it failed to affirmatively state the call was a sales call.

229. Each and every violation of the Telephone Solicitation Act is a violation of Section 16-115A of the Act, punishable as provided by Section 16-115B of the Act.

230. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV, Penalties, following.

S. Allegation No. 19 – 11/17/2014 Script - Guarantee of Savings in Violation of 83 Admin. Code 412.110(o)

231. Staff incorporates Paragraphs 206-210 by reference as if they were set forth fully herein.

232. The 11/17/2014 Script states or implies that switching to Sperian will guarantee a lower electric bill.

233. The 11/17/2014 Script directs agents to tell consumers ***BEGIN CONF*****
*****"END CONF***

234. In fact, if a consumer switches to Sperian their utility bill will not be "fixed" but rather will vary in direct relation to the current price of electricity and other market factors.

235. The 11/17/2014 Script repeatedly characterizes the Sperian rate with words or descriptors such as ***BEGIN CONF*****."END CONF*** It further compares the Sperian rate to the utility default rate alone, despite the availability of other rates.

236. Pursuant to Part 412, if savings are guaranteed under certain circumstances, the RES agent must describe in plain language the conditions that must be present for savings to occur. 83 Admin. Code 412.110(o).

237. RES agents following the 11/17/2014 Script did not describe in plain language what conditions must be present for savings to occur if the consumer selected Sperian as their RES.

238. By its conduct as described herein, Sperian violated Part 412.110(o) each and every time it utilized the 11/17/2014 Script and implied to consumers that savings were guaranteed but did not provide the circumstances under which those savings could be realized.

239. Each and every violation Part 412.110(o) is a violation of Section 16-115A of the Act, punishable as provided by Section 16-115B of the Act.

Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV, Penalties, following.

T. Allegation No. 20 – 11/17/14 Script - Failure to Drop Off Call in Violation of 815 ILCS 505/

240. Staff incorporates Paragraphs 206-210 by reference as if they were set forth fully herein.

241. Pursuant to the Consumer Services and Deceptive Practices Act, “[a] supplier or supplier's sales representative initiating a 3-way conference call or a call through an automated verification system must drop off the call once the 3-way connection has been established.” 815 ILCS 505/2EE(b).

242. The 11/17/2014 Script instructs the RES agent to tell the consumer that, ***BEGIN CONF*****”END CONF*** during the automated TPV at the end of the call. However, pursuant to Section 2EE of the CFA, the RES agent is required to drop off

the call entirely. Sperian's agent clearly stayed on the line during the automated TPV, in violation of Section 2EE.

243. Staff is informed and believes that, in the course of telephone solicitations employing this script, Sperian agents stayed on the line after consumers were connected with the automated TPV system.

244. By its conduct as described herein, Sperian violated the Consumer Fraud and Deceptive Business Practices Act each and every time an agent stayed on the line.

245. Each and every violation of the Consumer Fraud and Deceptive Business Practices Act is a violation of Section 16-115A of the Act, punishable as provided by Section 16-115B of the Act.

246. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV, Penalties, following.

U. Allegation No. 21 – 12/8/2014 Script - Failure to Obtain Consent for Solicitation in Violation of 83 Admin. Code 412.130(a)

247. Staff incorporates Paragraphs 1-41 by reference as if they were set forth fully herein.

248. One of the Documents Sperian provided to Staff included the header ***BEGIN CONF*****"END CONF*** ("12/8/2014 Script").

249. The 12/8/2014 Script was provided to Staff on April 8, 2015.

250. On information and belief, Sperian provided the 12/8/2014 Script to its agents to be used essentially verbatim when sales agents contacted consumers in or about December 2014.

251. On information and belief, Sperian and/or its agents followed the 12/8/2014 Script when contacting consumers in or about December 2014.

252. The Telephone Solicitation Act requires a live operator soliciting the sale of goods or services to “inquire at the beginning of the call whether the person called consents to the solicitation.” 815 ILCS 413/15(b)(2).

253. The 12/8/2014 Script contains no language that requires the agent to ascertain whether the consumer consents to the solicitation in violation of the Telephone Solicitation Act.

254. Section 412.130(a) sets forth the obligations of a RES agent who contacts consumers by telephone and specifies that these obligations are “in addition to complying with the Telephone Solicitation Act [815 ILCS 413].” 83 Admin. Code 412.130(a).

255. Violation of the Telephone Solicitation Act is a violation of Part 412.

256. By its conduct as described herein, Sperian violated the Telephone Solicitation Act each and every time it contacted consumers using the 12/8/2014 Script to solicit them to select Sperian as their retail electric provider and failed to obtain the consumer’s consent to the solicitation.

257. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV, Penalties, following.

V. Allegation No. 22 – 12/8/2014 Script - Failure to Identify Call as a Solicitation in Violation of 83 Admin. Code 412.130(a)

258. Staff incorporates Paragraphs 247-251 by reference as if they were set forth fully herein.

259. The 12/8/2014 Script does not contain language that informs the consumer that the call is a sales call.

260. Sperian acknowledged that the sales script utilized by the Company does not contain the word "solicitation." (Response, 8.)

261. The 12/8/2014 Script creates the net impression that the call is not a sale and the caller is not an agent of an independent seller of power and energy service by saying

BEGIN CONF**

*****. "END CONF***

262. The sales agent does not indicate the call is a sales call and instead suggests that the call is intended a means to help the consumer acquire ***BEGIN CONF*****

*****. "END CONF***

263. The Telephone Solicitation Act requires a live operator soliciting the sale of goods or services to "immediately state his or her name, the name of the business or organization being represented, and the purpose of the call." 815 ILCS 413/15(b)(1).

264. Section 412.130(a) sets forth the obligations of a RES agent who contacts consumers by telephone and specifies that these obligations are "in addition to complying with the Telephone Solicitation Act [815 ILCS 413]." 83 Admin. Code 412.130(a).

265. Violation of the Telephone Solicitation Act is a violation of Part 412.

266. By its conduct as described herein, Sperian violated the Telephone Solicitation Act each and every time it contacted consumers using the 12/8/2014 Script to solicit them to select Sperian as their retail electric provider without clearly articulating that intention and every time it failed to affirmatively state the call was a sales call.

267. Each and every violation of the Telephone Solicitation Act is a violation of Section 16-115A of the Act, punishable as provided by Section 16-115B of the Act.

268. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV, Penalties, following.

W. Allegation No. 23 – 12/8/2014 Script – Failure to Disclose Material Terms in Violation of 83 Ill. Admin. Code 412.110

269. Staff incorporates Paragraphs 248-252 by reference as if they were set forth fully herein.

270. The script does not address how Sperian's fixed monthly charge of \$4.93 affects the customer's estimated price per kWh using sample monthly usage levels of 500, 1000, and 1,500 kWh in violation of Section 412.110(p). While the fee was disclosed it was not disclosed in a manner consistent with the requirements of Section 412.110(p).

271. The variable rate portion of the script contains no statement of customer's right to rescind within 10 days in violation of Section 412.110(j).

272. The script contains no statement that the utility will send written notification of the switch in violation of Section 412.110(n).

273. By its conduct as described herein, Sperian violated Sections 412.110(p), 412.110(j) and 412.110(n) each and every time it utilized the 12/8/2014 Script and failed to disclose material terms of the contract to which the consumer is agreeing.

274. Each and every violation Section 412.110 is a violation of Section 16-115A of the Act, punishable as provided by Section 16-115B of the Act.

275. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV, Penalties, following.

X. Allegation No. 24 – 1/26/15b Script - Failure to Obtain Consent for Solicitation in Violation of 83 Admin. Code 412.130(a)

276. Staff incorporates Paragraphs 1-41 by reference as if they were set forth fully herein.

277. One of the Documents Sperian provided to Staff included the header ***BEGIN CONF*****END CONF*** (“1/26/2015b Script”).

278. The 1/26/2015b Script was provided to Staff on April 8, 2015.

279. On information and belief, Sperian provided the 1/26/2015b Script to its agents to be used essentially verbatim when sales agents contacted consumers in or about January 2015.

280. On information and belief, Sperian and/or its agents followed the 1/26/2015b Script when contacting consumers in or about January 2015.

281. The Telephone Solicitation Act requires a live operator soliciting the sale of goods or services to “inquire at the beginning of the call whether the person called consents to the solicitation.” 815 ILCS 413/15(b)(2).

282. The 1/26/2015b Script contains no language that requires the agent to ascertain whether the consumer consents to the solicitation in violation of the Telephone Solicitation Act.

283. Section 412.130(a) sets forth the obligations of a RES agent who contacts consumers by telephone and specifies that these obligations are “in addition to complying with the Telephone Solicitation Act [815 ILCS 413].” 83 Admin. Code 412.130(a).

284. Violation of the Telephone Solicitation Act is a violation of Part 412.

285. By its conduct as described herein, Sperian violated the Telephone Solicitation Act each and every time it contacted consumers using the 1/26/2015b Script to solicit them to select Sperian as their retail electric provider and failed to obtain the consumer's consent to the solicitation.

286. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV, Penalties, following.

Y. Allegation No. 25 – 1/26/2015b Script - Failure to Identify Call as a Solicitation in Violation of 83 Admin. Code 412.130(a)

287. Staff incorporates Paragraphs 276-280 by reference as if they were set forth fully herein.

288. In violation of the Telephone Solicitation Act, the 1/26/2015b Script does not contain language that informs the consumer that the call is a sales call.

289. Sperian acknowledged that the sales script utilized by the Company does not contain the word “solicitation.” (Response, 8.)

290. The 1/26/2015b Script provides the net impression that the call is not a sale and the caller is not an agent of an independent seller of power and energy service by first stating that Sperian is ***BEGIN CONF*****”END CONF*** and then referencing ***BEGIN CONF*****”END CONF*** and implies that Sperian had previously sent information about such a program, by stating that, ***BEGIN

CONF*****
*****?"END CONF*** In truth and
in fact, no ***BEGIN CONF"*****"END CONF*** exists, either
sanctioned by the State or otherwise.

291. The script implies that the sales agent is simply following up regarding information
allegedly provided regarding a so-called ***BEGIN CONF"*****"END CONF***
and further implies that the call is not actually a sales call, while it in truth an in fact is a
sales call. The agent further says ***BEGIN CONF*****
*****"END CONF***

292. The Telephone Solicitation Act requires a live operator soliciting the sale of goods
or services to "immediately state his or her name, the name of the business or
organization being represented, and the purpose of the call." 815 ILCS 413/15(b)(1).

293. Section 412.130(a) sets forth the obligations of a RES agent who contacts
consumers by telephone and specifies that these obligations are "in addition to complying
with the Telephone Solicitation Act [815 ILCS 413]." 83 Admin. Code 412.130(a).

294. Violation of the Telephone Solicitation Act is a violation of Part 412.

295. By its conduct as described herein, Sperian violated the Telephone Solicitation Act
each and every time it contacted consumers using the 1/26/2015b Script to solicit them
to select Sperian as their retail electric provider without clearly articulating that intention
and every time it failed to affirmatively state the call was a sales call.

296. Each and every violation of the Telephone Solicitation Act is a violation of Section
16-115A of the Act, punishable as provided by Section 16-115B of the Act.

297. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV, Penalties, following.

Z. Allegation No. 26 – 1/26/2015b Script - Failure to Disclose Material Terms in Violation of 83 Ill. Admin. Code 412.110

298. Staff incorporates Paragraphs 276-280 by reference as if they were set forth fully herein.

299. The 1/26/2015b Script describe the manner in which Sperian's fixed monthly charge of \$4.93 affects the customer's estimated price per kWh using sample monthly usage levels of 500, 1000, and 1,500 kWh in violation Part 412.110(p).

300. The 1/26/2015b Script fails to state whether Sperian intended to assess an early termination fee or penalty, the amount of any such fee or penalty, or the formula pursuant to which such fee or penalty is calculated in violation of Section 412.110(f). The TPV Script indicates the Company's intention to charge a termination fee if a customer cancels after the rescission period has ended.

301. By its conduct as described herein, Sperian violated Section 412.110(p) and 412.110(f) each and every time it utilized the 1/26/2015b Script and failed to disclose material terms of the contract to which the consumer is agreeing.

302. Each and every violation of Section 412.110 is a violation of Section 16-115A of the Act, punishable as provided by Section 16-115B of the Act.

303. Staff recommends the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV. Penalties, following.

AA. Allegation No. 27 – 1/29/2015 Script - Failure to Obtain Consent for Solicitation in Violation of 83 Admin. Code 412.130(a)

304. Staff incorporates Paragraphs 1-41 by reference as if they were set forth fully herein.

305. One of the Documents Sperian provided to Staff included the header ***BEGIN CONF*****"END CONF*** ("1/29/2015 Script").

306. The 1/29/2015 Script was provided to Staff on April 8, 2015.

307. On information and belief, Sperian provided the 1/29/2015 Script to its agents to be used essentially verbatim when sales agents contacted consumers in or about January and or February 2015.

308. On information and belief, Sperian and/or its agents followed the 1/29/2015 Script when contacting consumers in or about January 2015.

309. The Telephone Solicitation Act requires a live operator soliciting the sale of goods or services to "inquire at the beginning of the call whether the person called consents to the solicitation." 815 ILCS 413/15(b)(2).

310. The 1/29/2015 Script contains no language that requires the agent to ascertain whether the consumer consents to the solicitation in violation of the Telephone Solicitation Act.

311. Section 412.130(a) sets forth the obligations of a RES agent who contacts consumers by telephone and specifies that these obligations are "in addition to complying with the Telephone Solicitation Act [815 ILCS 413]." 83 Admin. Code 412.130(a).

312. Violation of the Telephone Solicitation Act is a violation of Part 412.

313. By its conduct as described herein, Sperian violated the Telephone Solicitation Act each and every time it contacted consumers using the 1/29/2015 Script to solicit them to select Sperian as their retail electric provider and failed to obtain the consumer's consent to the solicitation.

314. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV, Penalties, following.

BB. Allegation No. 28 – 1/29/2015 Script - Failure to Identify Call as a Solicitation in Violation of 83 Admin. Code 412.130(a)

315. Staff incorporates Paragraphs 304-308 by reference as if they were set forth fully herein.

316. The 1/29/2015 Script does not contain language that informs the consumer that the call is a sales call, in violation of the Telephone Solicitation Act.

317. Sperian acknowledged that the sales script utilized by the Company does not contain the word "solicitation." (Response, 8.)

318. The 1/29/2015 Script creates the net impression that the call is not a sale and the caller is not an agent of an independent seller of power and energy service.

319. The 1/29/2015 Script does not contain language that informs the consumer that the call is a sales call, in violation of the Telephone Solicitation Act.

320. The 1/29/2015 Script directs the RES agent to state, ***BEGIN

CONF*****

*****"END CONF*** The script implies that

Sperian sent such information, and the characterization of its offering as an entitlement to savings further hides the sale.

321. The 1/29/2015 Script continues, ***BEGIN CONF*****

*****."END CONF*** By

such statement, the script states or implies that the sales agent is a representative of the State of Illinois, or acting pursuant to a State requirement, advising ratepayers regarding a State benefit, or alternatively following up regarding information on a "choice program", and in either case implying that the call is not actually a sales call, when in truth and in fact it is a sales call.

322. The 1/29/2015 Script further states: ***BEGIN CONF*****

*****."END CONF***

323. The Telephone Solicitation Act requires a live operator soliciting the sale of goods or services to "immediately state his or her name, the name of the business or organization being represented, and the purpose of the call." 815 ILCS 413/15(b)(1).

324. Section 412.130(a) sets forth the obligations of a RES agent who contacts consumers by telephone and specifies that these obligations are "in addition to complying with the Telephone Solicitation Act [815 ILCS 413]." 83 Admin. Code 412.130(a).

325. Violation of the Telephone Solicitation Act is a violation of Part 412.

326. By its conduct as described herein, Sperian violated the Telephone Solicitation Act each and every time it contacted consumers using the 1/29/2015 Script to solicit consumers to select Sperian as their retail electric provider without clearly articulating that intention and every time it failed to affirmatively state the call was a sales call.

327. Each and every violation of the Telephone Solicitation Act is a violation of Section 16-115A of the Act, punishable as provided by Section 16-115B of the Act.

328. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV, Penalties, following.

CC. Allegation No. 29 – 1/29/2015 Script - Use of Deceptive or Misleading Language in Violation of 83 Ill Admin Cod 412.170(c)

329. Staff incorporates Paragraphs 304-308 by reference as if they were set forth fully herein.

330. The 1/29/2015 Script directs RES Agents to say ***BEGIN CONF*****

*****."END
CONF*** There is no ***BEGIN CONF*****"END CONF***.

331. The reference to ***BEGIN CONF*****"END CONF*** states or implies that the sales agent is a representative of the State of Illinois, or acting pursuant to a State requirement, advising ratepayers regarding a State benefit, or alternatively following up regarding information on a ***BEGIN CONF*****,"END CONF*** when in truth and in fact no such ***BEGIN CONF*****" or *****"END CONF*** exists. Likewise, Sperian's 1/29/15 Script states or implies that customers are ***BEGIN CONF*****"END CONF*** to receive savings by ***BEGIN CONF***** *****,"END CONF*** when in truth and in fact no such entitlement exists. Further, Sperian's 1/29/15 Script states or implies that the Sperian agent is a representative of the State of Illinois, or acting pursuant to a State requirement, and whose primary function is to assist customers in realizing the savings in question, when in truth and in fact the call is a solicitation intended exclusively to enroll the customer with Sperian, and the agent represents Sperian and Sperian alone.

332. The 1/29/2015 Script states that the Sperian rate is ***BEGIN CONF*****
 *****."END CONF*** The script states the ***BEGIN CONF*****"END CONF***,
 which it represents the customer to be ***BEGIN CONF*****,"END CONF*** can be
 BEGIN CONF**"END CONF*** to the customer's account.

333. Finally, the 1/29/2015 Script states that ***BEGIN
 CONF*****,"END
 CONF*** while in truth and in fact numerous other differences exist.

334. By its conduct as described herein, Sperian violated Part 412.170(c) each and every time it utilized the 1/29/2015 Script and described the switch to Sperian in deceptive or misleading terms which failed to clearly inform the consumer that the call was a solicitation that could result in his or her services were being switched from the utility to Sperian.

335. Each and every violation Part 412.170(c) is a violation of Section 16-115A of the Act, punishable as provided by Section 16-115B of the Act.

336. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV, Penalties, following.

DD. Allegation No. 30 – 1/30/2015 Script - Failure to Obtain Consent for Solicitation in Violation of 83 Admin. Code 412.130(a)

337. Staff incorporates Paragraphs 1-41 by reference as if they were set forth fully herein.

338. One of the Documents Sperian provided to Staff was an untitled Sperian script, dated 1.30.2015 ("1/30/2015 Script").

339. The 1/30/2015 Script was provided to Staff on April 8, 2015.

340. On information and belief, Sperian provided the 1/30/2015 Script to its agents to be used essentially verbatim when sales agents contacted consumers in or about January and or February 2015.

341. On information and belief, Sperian and/or its agents followed the 1/30/2015 Script when contacting consumers in or about January and/or February 2015.

342. The Telephone Solicitation Act requires a live operator soliciting the sale of goods or services to “inquire at the beginning of the call whether the person called consents to the solicitation.” 815 ILCS 413/15(b)(2).

343. The 1/30/2015 Script contains no language that requires the agent to ascertain whether the consumer consents to the solicitation in violation of the Telephone Solicitation Act.

344. Part 412.130(a) sets forth the obligations of a RES agent who contacts consumers by telephone and specifies that these obligations are “in addition to complying with the Telephone Solicitation Act [815 ILCS 413].” 83 Admin. Code 412.130(a).

345. Violation of the Telephone Solicitation Act is a violation of Part 412.

346. By its conduct as described herein, Sperian violated the Telephone Solicitation Act each and every time it contacted consumers using the 1/30/2015 Script to solicit them to select Sperian as their retail electric provider and failed to obtain the consumer’s consent to the solicitation.

347. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV. Penalties, following.

EE. Allegation No. 31 – 1/30/2015 Script - Failure to Identify Call as a Solicitation in Violation of 83 Admin. Code 412.130(a)

348. Staff incorporates Paragraphs 337-341 by reference as if they were set forth fully herein.

349. The 1/30/2015 Script does not contain language that informs the consumer that the call is a sales call, in violation of the Telephone Solicitation Act.

350. Sperian acknowledged that the sales script utilized by the Company does not contain the word "solicitation." (Response, 8.)

351. The 1/30/2015 Script creates the net impression that the call is not a sale and the caller is not an agent of an independent seller of power and energy service.

352. The 1/30/2015 Script does not contain language that informs the consumer that the call is a sales call, in violation of the Telephone Solicitation Act.

353. The 1/30/2015 Script provides the net impression that the call is not a sale and the caller is not an agent of an independent seller of power and energy service. ***BEGIN

CONF*****

*****"END CONF*** when

in truth and in fact, such ComEd customers do not have a rate reduction available, and when, in truth and fact, the call is intended solely to induce the customer to enroll with Sperian.

354. The 1/30/2015 Script further states that: ***BEGIN CONF*****

*****."END CONF***

These statements imply the salesperson is putting a ComEd rate reduction "in place," the message is not that the customer is changing suppliers.

355. The Telephone Solicitation Act requires a live operator soliciting the sale of goods or services to "immediately state his or her name, the name of the business or organization being represented, and the purpose of the call." 815 ILCS 413/15(b)(1).

356. Part 412.130(a) sets forth the obligations of a RES agent who contacts consumers by telephone and specifies that these obligations are "in addition to complying with the Telephone Solicitation Act [815 ILCS 413]." 83 Admin. Code 412.130(a).

357. Violation of the Telephone Solicitation Act is a violation of Part 412.

358. By its conduct as described herein, Sperian violated the Telephone Solicitation Act each and every time it contacted consumers using the 1/30/2015 Script to solicit consumers to select Sperian as their retail electric provider without clearly articulating that intention and every time it failed to affirmatively state the call was a sales call.

359. Each and every violation of the Telephone Solicitation Act is a violation of Section 16-115A of the Act, punishable as provided by Section 16-115B of the Act.

360. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV, Penalties, following.

FF. Allegation No. 32 – 1/30/2015 Script - Use of Deceptive or Misleading Language in Violation of 83 Ill Admin Cod 412.170(c)

361. Staff incorporates Paragraphs 337-341 by reference as if they were set forth fully herein.

362. The 1/30/2015 Script characterizes the Sperian rate by repeatedly referring to it as a ***BEGIN CONF"*****", END CONF*** and then says, ***BEGIN CONF"*****

*****"END CONF*** In truth and

in fact the call is intended solely and exclusively to induce the customer to enroll with Sperian.

363. By its conduct as described herein, Sperian violated Part 412.170(c) each and every time it utilized the 1/30/2015 Script and described the switch to Sperian in deceptive or misleading terms which failed to clearly inform the consumer that the call was a solicitation that could result in his or her services were being switched from the utility to Sperian.

364. Each and every violation Part 412.170(c) is a violation of Section 16-115A of the Act, punishable as provided by Section 16-115B of the Act.

365. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV. Penalties, following.

GG. Allegation No. 33 – 2/7/2015 Script - Failure to Obtain Consent for Solicitation in Violation of 83 Admin. Code 412.130(a)

366. Staff incorporates Paragraphs 1-41 by reference as if they were set forth fully herein.

367. One of the Documents Sperian provided to Staff included the header ***BEGIN CONF*****"END CONF*** ("2/7/2015 Script").

368. The 2/7/2015 Script was provided to Staff on April 8, 2015.

369. On information and belief, Sperian provided the 1/29/2015 Script to its agents to be used essentially verbatim when sales agents contacted consumers in or about February 2015.

370. On information and belief, Sperian and/or its agents followed the 2/7/2015 Script when contacting consumers in or about January 2015.

371. The Telephone Solicitation Act requires a live operator soliciting the sale of goods or services to “inquire at the beginning of the call whether the person called consents to the solicitation.” 815 ILCS 413/15(b)(2).

372. The 2/7/2015 Script contains no language that requires the agent to ascertain whether the consumer consents to the solicitation in violation of the Telephone Solicitation Act.

373. Part 412.130(a) sets forth the obligations of a RES agent who contacts consumers by telephone and specifies that these obligations are “in addition to complying with the Telephone Solicitation Act [815 ILCS 413].” 83 Admin. Code 412.130(a).

374. Violation of the Telephone Solicitation Act is a violation of Part 412.

375. By its conduct as described herein, Sperian violated the Telephone Solicitation Act each and every time it contacted consumers using the 2/7/2015 Script to solicit them to select Sperian as their retail electric provider and failed to obtain the consumer’s consent to the solicitation.

376. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV, Penalties, following.

HH. Allegation No. 34 – 2/7/2015 Script - Failure to Identify Call as a Solicitation in Violation of 83 Admin. Code 412.130(a)

377. Staff incorporates Paragraphs 366-370 by reference as if they were set forth fully herein.

378. The 2/7/2015 Script does not contain language that informs the consumer that the call is a sales call, in violation of the Telephone Solicitation Act.

379. Sperian acknowledged that the sales script utilized by the Company does not contain the word "solicitation." (Response, 8.)

380. The 2/7/2015 Script creates the net impression that the call is not a sale and the caller is not an agent of an independent seller of power and energy service.

381. The 2/7/2015 Script does not contain language that informs the consumer that the call is a sales call, in violation of the Telephone Solicitation Act.

382. The 2/7/2015 Script creates the net impression that the call is not a sale and the caller is not an agent of an independent seller of power and energy service. The salesperson says: ***BEGIN CONF*****

*****"END CONF***

This implies that the call is simply a follow-up to some information sent throughout the customer's area regarding the general availability of a utility rate reduction. Indicating that a customer might obtain a ***BEGIN CONF*****"END CONF*** does not disclose the call is a solicitation, nor does it make clear that any such ***BEGIN CONF*****,"END CONF*** is contingent upon a change in supplier.

383. The Telephone Solicitation Act requires a live operator soliciting the sale of goods or services to "immediately state his or her name, the name of the business or organization being represented, and the purpose of the call." 815 ILCS 413/15(b)(1).

384. Section 412.130(a) sets forth the obligations of a RES agent who contacts consumers by telephone and specifies that these obligations are "in addition to complying with the Telephone Solicitation Act [815 ILCS 413]." 83 Admin. Code 412.130(a).

385. Violation of the Telephone Solicitation Act is a violation of Part 412.

386. By its conduct described herein, Sperian violated the Telephone Solicitation Act each and every time it contacted consumers using the 2/7//2015 Script to solicit consumers to select Sperian as their retail electric provider without clearly articulating that intention and every time it failed to affirmatively state the call was a sales call.

387. Each and every violation of the Telephone Solicitation Act is a violation of Section 16-115A of the Act, punishable as provided by Section 16-115B of the Act.

388. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV, Penalties, following.

II. Allegation No. 35 – 2/7/2015 Script – Use of Deceptive or Misleading Language in Violation of 83 Ill Admin Cod 412.170(c)

389. Staff incorporates Paragraphs 366-370 by reference as if they were set forth fully herein.

390. The 2/7/2015 Script uses the language ***BEGIN CONF*****. "END CONF*** In truth and in fact, there is no ***BEGIN CONF*****. "END CONF***

391. The 2/7/2015 Script fails to properly disclose the potential change in energy suppliers. The 2/7/2015 Script states that ***BEGIN CONF***** "*****" END CONF*** when in truth and in fact the customer will be switched to Sperian.

392. The 2/7/2015 Script implies the caller works for the utility and/or is fulfilling an administrative function by stating that the Sperian agent ***BEGIN CONF "just ha[s] to verify the clerical information on the bill to apply the savings." END CONF***

393. The 2/7/2015 Script misrepresents the Sperian rate by referring to it as ***BEGIN CONF*****.END CONF***

394. The 2/7/2015 Script states that the ***BEGIN CONF*****.END CONF*** The emphasis on the fact that Sperian's pricing model does not change when rates increase disingenuously also ignores the fact that the rates don't change when market prices decrease.

395. By its conduct described herein, Sperian violated Section 412.170(c) each and every time it utilized the 2/7/2015 Script and described the switch to Sperian in deceptive or misleading terms which failed to clearly inform the consumer that the call was a solicitation that could result in his or her services were being switched from the utility to Sperian.

396. Each and every violation Section 412.170(c) is a violation of Section 16-115A of the Act, punishable as provided by Section 16-115B of the Act.

397. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV, Penalties, following.

JJ. Allegation No. 36 – 2/7/15 Script – Failure to Disclose Material Terms in Violation of 83 Ill. Admin. Code 412.110

398. Staff incorporates Paragraphs 366-370 by reference as if they were set forth fully herein.

399. The 2/7/2015 Script does not describe the manner in which Sperian's fixed monthly charge of ***BEGIN CONF\$*****END CONF*** affects the customer's estimated price per kWh using sample monthly usage levels of 500, 1000, and 1,500 kWh in violation of

Section 412.110(p). In fact, this script fails to disclose the fact that Sperian charges such a fixed monthly charge, in violation of Section 412.110(d) and (p).

400. The 2/7/2015 Script fails to properly disclose the customer's right to rescind the pending enrollment. Specifically, the script, while disclosing that a customer has a right to "cancel", further states that Sperian will charge a ***BEGIN CONF****END CONF*** fee for "cancellation" before the term is up. Accordingly, this constitutes a violation of Sections 412.110(k).

401. The 2/7/2015 Script fails to include the required full disclosure that the utility remains responsible for delivery; will respond to service calls and emergencies; and that the switch to Sperian will not impact the customer's electric service reliability. Failure to disclose this information is a violation of Section 412.110(m).

402. Additionally, the 2/7/2015 Script implies there will be no change in the energy supplier, stating: ***BEGIN CONF*****
 *****."END CONF*** The implication that there is no sale or change in supplier is a violation of Part 412.110(l). Further, the ***BEGIN CONF*****"END CONF*** could easily be interpreted to mean the price will be exactly the same as what they are currently paying.

403. The 2/7/2015 Script contains no statement that the customer will receive written notification from the electric utility confirming the switch of the customer's power and energy supplier in violation of Section 412.110(n).

404. By its conduct as described herein, Sperian violated Sections 412.110(d), 412.110(k), 412.110(l), 412.110(m) and 412.110(n) each and every time it utilized the

2/7/2015 Script and failed to disclose material terms of the contract to which the consumer is agreeing.

405. Each and every violation Part 412.110 is a violation of Section 16-115A of the Act, punishable as provided by Section 16-115B of the Act.

406. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV, Penalties, following.

KK. Allegation No. 37 - TPV Script – Failure to Confirm Customer's Acceptance and Understanding of Uniform Disclosures in Part 412.110(d) – (p)

407. Staff incorporates by reference paragraphs 1-41 as if set forth fully herein.

408. One of the Documents Sperian provided to Staff was entitled ***BEGIN CONF*****
*****"END CONF*** ("TPV Script").

409. On information and belief, the TPV script is the script for the automated third party verification system to which consumers were connected after agreeing, knowingly or otherwise, to switch their retail electric service to Sperian when contacted by a Sperian agent utilizing one or more of the scripts described herein.

410. TPV scripts for telemarketing sales in Illinois are required to confirm a customer's understanding and acceptance of the uniform disclosure statements set forth in Section 412.110, specifically items (d) through (p) of that code section.

411. Sperian's TPV Script fails to confirm the consumer's understanding and acceptance that an early termination fee for Sperian's variable rate product will be assessed, in violation of Section 412.110(f).

412. Sperian's TPV Script fails to confirm the consumer's understanding and acceptance that the consumer may rescind his or her contract with Sperian prior to enrollment request submission to the utility or rescind the pending enrollment within 10 calendar days after the electric utility processes the enrollment request without an early termination fee. Instead, the script refers to ***BEGIN CONF*****END CONF*** and implies a fee in violation of Section 412.110 (j) and (k). Section 412 has separate and distinct requirements for cancellation and rescission.

413. Sperian's TPV Script fails to confirm the consumer's understanding and acceptance that Sperian is an independent seller of power and energy service, and that the RES agent is not acting on behalf of government agencies or consumer groups. The TPV script only mentions that Sperian is not affiliated with the utility, but fails to disclose that Sperian is not affiliated with government or consumer groups in violation of Section 412.110 (l).

414. Sperian's TPV Script fails to confirm the consumer's understanding and acceptance that the electric utility will still deliver power to the consumer's premises and respond to service calls and emergencies, and that the switching to Sperian will not impact the consumer's electric service reliability in violation of Section 412.110 (m).

415. Sperian's TPV Script fails to confirm the consumer's understanding and acceptance that the consumer will receive a written notification from the electric utility confirming the consumer's switch to Sperian for supply service in violation of Section 412.110 (n).

416. Sperian's TPV Script fails to confirm the consumer's understanding and acceptance of the manner in which Sperian's fixed monthly energy service charge of

BEGIN CONF\$END CONF*** affects the consumer's estimated price per kWh using sample monthly usage levels of 500, 1000, and 1,500 kWh in violation of Section 412.110 (k).

417. By its conduct as described herein, Sperian violated Sections 412.110(f), 412.110(j), 412.110(k), 412.110(l), 412.110(m) and 412.110(n) each and every time it utilized the TPV Script and failed to disclose material terms of the contract to which the consumer is agreeing.

418. Each and every violation Part 412.110 is a violation of Section 16-115A of the Act, punishable as provided by Section 16-115B of the Act.

419. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV, Penalties, following.

LL. Allegation No. 38 – Welcome letter – Failure to Disclose terms/conditions in Violation of 83 Ill Admin. Code 412.110/

420. Staff incorporates by reference paragraphs 1-41 as if set forth fully herein.

421. During the course of its investigation of Sperian's misconduct and potential violations, Staff asked Sperian to clarify how the Company complied with the disclosure requirements set forth at 83 Ill Admin. Code 412.110/.

422. Sperian informed Staff that it sent each new customer a Welcome Letter. Sperian also indicated that included with that Welcome Letter was an enclosure describing the terms and conditions of the contract.

423. In those instances when both the Welcome Letter and the terms and conditions sheet were sent to consumers, those documents make many of the required disclosures.

However, the Welcome Letter and terms and conditions sheet fail to address several terms and conditions which the Company is required by law to disclose to the consumer.

424. The welcome letter and terms and conditions sheet fail to specify the length of the contract, in violation of Part 412.110(e).

425. Neither the Welcome Letter nor terms and conditions include a statement that Sperian is an independent seller of power and energy service certified by the Illinois Commerce Commission and that the RES agent is not representing or acting on behalf of the electric utility, governmental bodies or consumer groups. Failure to include this information is a violation of Part 412.110(l).

426. The Welcome Letter and terms and condition sheet do not include an estimated price per kWh for the power and energy service using sample monthly usage levels of 500, 1000 and 1,500 kWh for any product that includes a fixed monthly charge that does not change with the customer's usage and the fixed monthly charge does not include delivery service charges. Failure to provide this information is a violation of Section 412.110(p).

427. Sperian violated Part 412.110(e), Part 412.110(l) and Part 412.110(p) each and every time it utilized the Welcome Letter and terms and conditions sheet and failed to disclose material terms of the contract to which the consumer is agreeing.

428. Each and every violation Part 412.110 is a violation of Section 16-115A of the Act, punishable as provided by Section 16-115B of the Act.

429. Staff recommends the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations.

Recommended action for this alleged violation is addressed more fully in Section IV, Penalties, following.

MM. Allegation No. 39 – Welcome letter - Use of Deceptive or Misleading Language in Violation of 83 Ill Admin Code 412.170(c)

430. Staff incorporates by reference paragraphs 421-423 as if set forth fully herein.

431. In its Welcome Letter, Sperian characterizes its fixed term product as a ***BEGIN CONF*****"END CONF*** and a ***BEGIN CONF*****"END CONF***. In truth and in fact, however, Sperian's rates may not be low or discounted compared to the Utility's rate if the utility supply rate fluctuates to a lower level than the fixed Sperian rate. Sperian's false implication that the fixed rate will always be lower deceives the customer about the reality that electric supply prices can fluctuate up or down.

432. The disclosures and accompanied language included in the Welcome Letters, like the Sperian sales scripts and TPV scripts, fail to explain the manner in which Sperian's fixed monthly charge of ***BEGIN CONF\$****END CONF*** affects the rate using sample monthly usage levels of 500, 1000, and 1,500 kWh. Instead, the Company provides a chart using sample monthly usage levels of 500, 1000 and 1,500 kWh but the chart does not take the fixed monthly charge into consideration. Failure to disclose this required information is a violation of Section 412.110(p).

433. On information and belief, the terms and conditions sheet was not included with all Welcome Letters. Letters reviewed by Staff directed the consumer to visit Sperian's website to find the ***BEGIN CONF*****"END CONF***

434. By its conduct described herein, Sperian violated Section 412.110(p) each and every time it utilized the Welcome Letter and failed to include a terms and conditions sheet which would disclose material terms of the contract to which the consumer is agreeing.

435. Each and every violation of Section 412.110 is a violation of Section 16-115A of the Act, punishable as provided by Section 16-115B of the Act.

436. Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV, Penalties, following.

NN. Allegation No. 40 – Failure to Train Agents in Violation of 83 Ill Admin. 412.170.

437. Staff incorporates Paragraphs 1-436 by reference as if set forth fully herein.

438. Section 412.170 requires that sales agents of an ARES be properly trained so the agents do not “utilize false, misleading, materially inaccurate or otherwise deceptive language or materials in soliciting or providing services.” 83 Ill. Admin. Code 412.170(c).

439. The significant number of instances in which RES agents provided false, deceptive or misleading information to consumers is evidence of Sperian's failure to properly train agents in violation of Section 412.170(c).

440. Sperian's failure to properly train its agent lead to confusion, misinformation and an increase in consumer complaints.

441. Each and every violation of Part 412.170(c) a violation of Section 16-115A of the Act, punishable as provided by Section 16-115B of the Act.

442. Staff recommends the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations.

Recommended action for this alleged violation is addressed more fully in Section IV.

Penalties, following.

IV. PENALTIES

A. Remedies Available to the Commission

443. Section 16-115B(b) of the Act authorizes the Commission, after notice and hearing held on complaint or on the Commission's own motion to take any or all of the following actions:

- (1) [t]o order an alternative retail electric supplier to cease and desist, or correct, any violation of or non-conformance with the provisions of Section 16-115 or 16-115A;
- (2) [t]o impose financial penalties for violations of or non-conformances with the provisions of Section 16-115 or 16-115A, not to exceed (i) \$10,000 per occurrence or (ii) \$30,000 per day for those violations or non-conformances which continue after the Commission issues a cease and desist order; and
- (3) [t]o alter, modify, revoke or suspend the certificate of service authority of an alternative retail electric supplier for substantial or repeated violations of or non-conformances with the provisions of Section 16-115 or 16-115A.

220 ILCS 5/16-115B(b).

444. Section 5-202.1 states that "any corporation...who knowingly misrepresents facts...through testimony or the offering or withholding of material information in a proceeding shall be subject to a civil penalty...of not less than \$1,000 and not greater than \$500,000. Each misrepresentation...shall constitute a separate and distinct violation." 220 ILCS 5/5-202.1

445. Additionally, in the alternative and in the event that any of the Allegations are determined not to be violations of Section 16-115 or 16-115A, Section 5/5-202 of the Act

addresses violations that are not otherwise covered by the Act. Pursuant to this section, "...any corporation other than a public utility...that violates or fails to comply with any provision of this Act...in a case in which a penalty is not otherwise provided for this Act...are subject to a civil penalty of up to \$30,000 for each and every offense." 220 ILCS 5/5-202.

446. In addition to remedies available to it under the Act for violations of the Act, the Commission has the authority to address any complaints filed by any consumer whose electric service was or is provided by Sperian in violation of the Consumer Fraud and Deceptive Practices Act. Specifically, if the Commission, after notice and hearing, the Commission finds that an electric service provider has violated this Section, the Commission may in its discretion do any one or more of the following:

- (1) Require the violating electric service provider to refund to the subscriber charges collected in excess of those that would have been charged by the subscriber's authorized electric service provider.
- (2) Require the violating electric service provider to pay to the subscriber's authorized electric supplier the amount the authorized electric supplier would have collected for the electric service. The Commission is authorized to reduce this payment by any amount already paid by the violating electric supplier to the subscriber's authorized provider for electric service.
- (3) Require the violating electric subscriber to pay a fine of up to \$1,000 into the Public Utility Fund for each repeated and intentional violation of this Section.
- (4) Issue a cease and desist order.
- (5) For a pattern of violation of this Section or for intentionally violating a cease and desist order, revoke the violating provider's certificate of service authority.

B. Factors In Aggravation of Sanctions

447. Each and every violation set forth herein is an "applicable federal, State, regional and industry rules, policies, practices and procedures for the use, operation, and

maintenance of the safety, integrity and reliability, of the interconnected electric transmission system.” 220 ILCS 5/16-115(d)(2).

448. Each and every violation set forth herein is a “violation of or non-conformance with the provisions of Section 16-115 or 16-115A.” 220 ILCS 5/16-115B(b).

449. For each and every violation set forth herein the Commission may fine Sperian up to \$10,000 per occurrence. 220 ILCS 5/16-115B(b)(2).

450. For each and every violation set forth herein the Commission may alter, revoke or suspend Sperian’s certificate of service authority. 220 ILCS 5/16-115B(b)(3).

451. Sperian’s violations demonstrate a pattern and practice of disregard for the statutory obligations of alternative retail electric service providers.

452. Sperian’s violations demonstrate an intent to mislead the Commission as to the nature of Sperian’s conduct.

453. Sperian’s violations demonstrate a pattern and practice of intentionally misleading Illinois Consumers.

454. Sperian’s pattern of non-compliant sales practices harmed both consumers and the competitive market.

455. Sperian’s violations are numerous and extensive. On information and belief, Sperian enrolled approximately ***BEGIN CONF*****END CONF*** customers using scripts that resulted in one or more violations per enrollment, each occurrence of which is punishable by a fine of up to \$10,000 pursuant to Section 16-115B.

456. By virtue of its contacts with Staff during the 2012 period, as alleged more fully herein, Sperian was placed on actual notice regarding compliance with various statutes

and rules governing the solicitation of customers by RES, and its subsequent failure to comply with such statutes and rules must therefore be deemed knowing and willful.

457. On information and belief, other State agencies and organizations that address consumer complaints have received complaints of a similar nature as those brought to the attention of Staff. Such organization may include the Attorney General's Consumer Fraud Division, the Citizens Utility Board or the Better Business Bureau.

C. Staff Recommendations

458. Staff recommends this proceeding continue as in the case of Complaints as set forth in Article X of the Act.

459. Staff recommends that Sperian be given an opportunity to present information in defense of the allegations contained herein.

460. Staff recommends that, upon completion of a hearing, Sperian be found to be in violation of the allegations set forth herein.

461. Staff recommends that, upon completion of a hearing and a finding that Sperian is in violation of the allegations set forth herein, the Commission take such of the following actions as it determines are warranted by the evidence and the public interest as prescribed by Section 16-115B of the Act:

1. Revoke Sperian's Certificate of Service Authority to operate as a Retail Electric Service Provider in Illinois;
2. Modify Sperian's certificate of Service Authority to operate as a Retail Electric Service provider in Illinois as to restrict Sperian's service authority to serve only its existing customers of record at the time of the issuance of a Final Order in this proceeding.

3. Prohibit Sperian from applying for an unrestricted certificate of Service Authority to operate as a Retail Electric Supplier in Illinois for a period of not less than three years.
4. That Sperian be assessed a fine of up to \$10,000 for each and every violation.

V. CONCLUSION

WHEREFORE Staff recommends the Commission enter an order in accordance with the foregoing and take any such other action as the Commission deems just and appropriate.

Respectfully submitted,

/s/ _____
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